

THE CHURCH AND SCHOOLS, 1824

[The following Opinion of Counsel is docketed: " John S. More's Opinion Concerning the right of Private Teachers to teach Schools without being liable to Presbyteries, &c. [Edinburgh] 25th March 1824." The italics are the writer's.]

FROM the very best intentions, but, as I humbly conceive, without the slightest legal authority, the General Assembly of our National Church has, from time to time, passed enactments requiring the several Presbys. of the Church to take cognisance of all private teachers within their bounds, to examine them as to their sufficiency, and to take steps for regulating, or suppressing their schools. I consider any attempt on the part of these Church Judicatories to interfere with private schools to be a gross act of usurpation, not only unsupported by law, but contrary to the spirit of all the enactments of the Legislation on the subjects of schools.

The parochial schools of Scotland form part of the National Establishment for the moral and religious instruction of the people; and these seminaries have very properly been placed under the superintendence of the Presbys. of their bounds. The Statute 1693, c. 22 (1 William and Mary) entitled an act for settling the peace and quiet of *the Church*: enacts, *inter alia*, " That all schoolmasters and teachers of youth in schools are and shall be liable to the trial, judgement, and censure of the Presbys. of their bounds for their sufficiency, qualifications and deportment in *the said office*." I know this clause of the Statute has sometimes been understood as conferring a right upon Presbyteries to interfere with *all teachers* of youth whether *in schools or not*; but this appears to be a complete misconstruction of the meaning and terms of the act. It no doubt gives the Presbytry the cognisance of all Schoolmasters and *teachers of youth in Schools*; by which not only the proper Schoolmasters but also Ushers or other assistants in *parochial schools* are subject to the jurisdiction and cognisance of the Presby. The word *School* in the Statute must be understood in the same sense with the words *Church* or *Presby.* in the preceding clauses of the Statute as referring to the *established* or *public* schools and *not* to private *seminaries*.

I am therefore of opinion that the Judicatories of the Established Church, notwithstanding the acts of the General Assembly, have no more right to interfere with private schools, than the Judicatories or Presbyteries of any Dissenting Church. The footing upon which any person is entitled to set up, and teach, a private School in Scotland is

fixed by the Statute 19 Geo. II. c. 39, § 21, which requires that every private school should be registered in a Book to be kept for that purpose by the Sheriff, that the teacher should take the oaths to Government and should pray for the King in his school as often as prayers shall be said, and should not resort to any Episcopal meeting House not allowed by law. Chaplains and Governors in families are put under the same regulation; *but no authority is given to the Church Courts of the Established Church to take cognisance of such schools.* On the contrary, by an express clause of the Statute, *Sheriffs and Magistrates are the only competent Authorities to take cognisance of private Schools, within their bounds.*

Before the date of this Statute every person whatever (with the exception of Papists who were prohibited from teaching youth by the Statute 1700, c. 3) was entitled, without any condition or restriction, to set up and teach a private school.

The Statute above referred to was passed in the year 1746 in reference to the rebellion of the previous year, and therefore it is the only existing Statuary [*sic*] regulation as to private schools in Scotland, its provisions have become unnecessary and have long since gone into disuse. I believe the Register appointed to be kept by it has never been kept at all in some counties and in all the counties of Scotland has gone into complete disuse. But upon complying with its provisions (if required to do so by the Sheriff) no teacher of a private School can be disturbed by any person. The Statute, 43 Geo. III., c. 54, which empowers Presbys. to visit schools, and declares that Schools still continue under the superintendence of the ministers of the Established Church as formerly, relates exclusively, as its title and various enactments show, to *parish Schools*.

In short, I conceive the law on this subject, to be correctly laid down by Mr Hutchison in his Justice of the Peace (where it is stated in the preface, was revised sheet by sheet, by the late Lord President Campbell) where he says (Vol. 2 p. 298, 2nd Edit.) that *the Presby. has no superintendence over private schools.*

I have only further to say that, however much I respect the Judicatories of our National Church, I think it is the bounden duty of every Dissenting teacher or Schoolmaster, when cited before a Presby. for the purpose of undergoing any Trial, or producing evidence of his having qualified himself by taking the oaths to Government, to decline their jurisdiction. Any enquiry of this kind belongs to the Sheriff or other Judge Ordinary and not to the Presbytry who have no more right to enquire whether the teacher of a private school has taken the oaths, or is otherwise qualified to teach it, than they would have to enquire whether the Writers or Notaries public within their bounds, were duly qualified, in terms of law for the discharge of their office.